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HEARINGS

Before the

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

S. 1824, AN AMENDMENT TO THE NATIONAL SECURITY ACT OF 1947

Washington, D.C.

June 21, 1983

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C O N T E N T S

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2	<u>STATEMENT OF:</u>	<u>PAGE</u>
3	The Honorable Strom Thurmond, Member of the United	4
4	States Senate from South Carolina	
5	John McMahon, Deputy Director of Central Intelligence	9
6	Accompanied by:	
7	John Stein, Deputy Director of Operations, CIA; R.	
8	Evan Hineman, Deputy Director for Science and	
9	Technology, CIA; Ernest Mayerfeld, Deputy General	
10	Counsel, CIA; Larry Strawderman, Chief, Information	
11	and Privacy Division, CIA; and William Kotapish,	
12	Director of Security	
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1 S. 1324, AN AMENDMENT TO THE NATIONAL SECURITY ACT OF 1947

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Tuesday, June 21, 1983

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United States Senate

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Select Committee on

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Intelligence

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Washington, D. C.

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10 The Committee met, pursuant to notice, at 1:56 p.m., in
11 Room SD-124 Dirksen Senate Office Building, the Honorable
12 Barry Goldwater (Chairman of the Committee) presiding.

13 Present: Senators Goldwater, Chafee, Huddleston, and
14 Leahy.

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The Chairman: The meeting will come to order.

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18 Today we welcome John McMahon, the Deputy Director of
19 Central Intelligence, who is appearing on behalf of the CIA
20 to present the Agency's view on S. 1324. He has brought with
21 him Ernie Mayerfeld, Deputy General Counsel, and Larry
22 Strawderman, Chief of the Information and Privacy Section of
23 the Agency.

24

25 I also welcome Senator Strom Thurmond, who I will
introduce in just a few moments.

26

Next Tuesday afternoon I will again have a public hearing
so that interested individuals and organizations can

1 testify.

2 This bill amends the National Security Act of 1947 so
3 that the major operational components of the Central
4 Intelligence Agency will be relieved of the overwhelming
5 burden of searching and reviewing sensitive operational files
6 in response to certain requests for information under the
7 Freedom of Information Act.

8 This relief will allow these components to devote their
9 resources to gathering the vital intelligence our government
10 needs to make informed decisions in foreign policy and
11 national defense.

12 In order to expedite these hearings, I will insert the
13 remainder of my opening remarks to be printed in the record
14 as if read.

15 [The opening statement of Senator Goldwater follows:]
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OPENING STATEMENT
BY
CHAIRMAN BARRY GOLDWATER
OF THE
SENATE SELECT COMMITTEE ON INTELLIGENCE
ON S. 1324, AN AMENDMENT TO THE
NATIONAL SECURITY ACT OF 1947

JUNE 21, 1983

THE HEARING WILL COME TO ORDER.

TODAY I WELCOME JOHN MCMAHON, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE, WHO IS APPEARING ON BEHALF OF THE CIA TO PRESENT THE AGENCY'S VIEWS ON S. 1324. HE HAS BROUGHT WITH HIM ERNIE MAYERFELD, DEPUTY GENERAL COUNSEL, AND LARRY STRAWDERMAN, CHIEF OF THE INFORMATION AND PRIVACY DIVISION FOR THE AGENCY. NEXT TUESDAY AFTERNOON, I WILL AGAIN HAVE A PUBLIC HEARING SO THAT INTERESTED INDIVIDUALS AND ORGANIZATIONS CAN TESTIFY.

THIS BILL AMENDS THE NATIONAL SECURITY ACT OF 1947 SO THAT THE MAJOR OPERATIONAL COMPONENTS OF THE CENTRAL INTELLIGENCE AGENCY WILL BE RELIEVED OF THE OVERWHELMING BURDEN OF SEARCHING AND REVIEWING SENSITIVE OPERATIONAL FILES IN RESPONSE TO CERTAIN REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT. THIS RELIEF WILL ALLOW THESE COMPONENTS TO DEVOTE THEIR RESOURCES TO GATHERING THE VITAL

- 2 -

INTELLIGENCE OUR GOVERNMENT NEEDS TO MAKE INFORMED DECISIONS IN FOREIGN POLICY AND NATIONAL DEFENSE.

LET ME EXPLAIN VERY BRIEFLY WHY I THINK THAT THIS LEGISLATION IS NEEDED.

IN THE EIGHT YEARS SINCE FOIA HAS BEEN IN ITS PRESENT FORM, THE CIA HAS WORKED HARD TO COMPLY WITH THE ACT. HOWEVER, IT HAS BEEN DARNED NEAR IMPOSSIBLE TO KEEP UP WITH ALL THE REQUESTS IN THE WAY THE ACT REQUIRES. I DON'T THINK CONGRESS REALLY CONTEMPLATED WHAT BURDENS FOIA WOULD PLACE ON AN INTELLIGENCE AGENCY.

FOIA MANDATES THAT IF SOMEONE REQUESTS ALL THE INFORMATION ON A CERTAIN SUBJECT THAT ALL THE FILES HAVE TO BE LOCATED. IN THE INTELLIGENCE AGENCY, MOST OF THE INFORMATION IS CLASSIFIED. BUT THAT FACT DOES NOT END THE AGENCY'S JOB. AN EXPERIENCED PERSON MUST GO THROUGH STACKS AND STACKS OF THESE PAPERS, SOMETIMES THEY ARE MANY FEET TALL, AND JUSTIFY THE REASON THAT ALMOST EVERY SINGLE SENTENCE SHOULD NOT BE RELEASED. IF THIS IS NOT DONE WELL, A COURT COULD THEN ORDER THE INFORMATION RELEASED.

WHAT HAS BEEN THE RESULT OF THIS BURDENSOME PROCESS? VERY LITTLE INFORMATION, IF ANY, IS RELEASED FROM OPERATIONAL FILES WHEN THE REQUEST SEEKS INFORMATION CONCERNING THE SOURCES AND METHODS USED TO COLLECT INTELLIGENCE. EVEN THEN THE RELEASED INFORMATION IS USUALLY FRAGMENTED.

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THERE IS A GREAT RISK OF A MISTAKEN DISCLOSURE DUE TO THIS MANDATORY SEARCH AND REVIEW OF SENSITIVE FILES AND THE POSSIBILITY THAT SOME COURT MAY ORDER THE RELEASE OF INFORMATION WHICH COULD REVEAL A SOURCE'S IDENTITY OR A LIAISON RELATIONSHIP. IT IS ONLY THESE MOST SENSITIVE OPERATIONAL FILES WHICH THIS BILL WOULD EXEMPT FROM SEARCH AND REVIEW.

IT IS IMPORTANT TO KNOW THAT THIS LEGISLATION DOES NOT FRUSTRATE THE ESSENTIAL PURPOSES OF THE FOIA. REQUESTORS WILL CONTINUE TO HAVE ACCESS TO CIA FILES CONTAINING THE INTELLIGENCE PRODUCT, AND TO INFORMATION ON POLICY QUESTIONS AND DEBATES ON THESE POLICIES. ADDITIONALLY, ACCESS TO FILES FOR INDIVIDUAL U.S. CITIZENS AND PERMANENT RESIDENT ALIENS WHO SEEK INFORMATION ON THEMSELVES WILL NOT BE AFFECTED BY S. 1324.

THE AMERICAN PUBLIC CAN ONLY STAND TO BENEFIT BY THIS BILL. BY EXEMPTING THOSE OPERATIONS FILES FROM SEARCH AND REVIEW, THE PROCESSING OF ALL OTHER REQUESTS CAN BE COMPLETED MUCH SOONER. THE PUBLIC WILL RECEIVE THAT INFORMATION WHICH IS RELEASABLE UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACTS IN A FAR MORE EFFICIENT AND SATISFYING MANNER. THE WAIT FOR A RESPONSE FROM THE CIA NOW TAKES ANYWHERE FROM TWO TO THREE YEARS. THIS KIND OF SITUATION BENEFITS NO ONE.

IN SHORT, THIS BILL RELIEVES THE CIA OF CERTAIN TIME CONSUMING SEARCH AND REVIEW REQUIREMENTS. BY SO DOING,

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IT PROVIDES THE FOIA REQUESTOR SPEEDIER RESPONSES FOR THOSE AREAS WHICH SHOULD BE SUBJECT TO PUBLIC SCRUTINY. AT THE SAME TIME, IT WILL ENABLE THE AGENCY TO TAKE A NUMBER OF EXPERIENCED PERSONNEL OUT OF THE BUSINESS OF REVIEWING FILES AND PERMIT THEM TO GET BACK TO INTELLIGENCE WORK.

WE SCHEDULED THIS HEARING SO THAT THE PUBLIC CAN KNOW, AS MUCH AS POSSIBLE WITHIN SECURITY RESTRICTIONS, HOW THIS LEGISLATION WILL WORK AT THE AGENCY. JOHN, LET'S BEGIN.

1 The Chairman: I welcome Senator Strom Thurmond, the
2 distinguished Chairman of the Senate Judiciary Committee, who
3 was our original co-sponsor of S. 1324. For this reason, I
4 have asked him to say a few words as lead-off witness.
5 Because of other commitments that he has, he cannot stay for
6 question.

7 However, Strom, why do you not lead off?

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1 STATEMENT OF THE HONORABLE STROM THURMOND, MEMBER OF THE
2 UNITED STATES SENATE FROM SOUTH CAROLINA

3 Senator Thurmond: Thank you very much, Mr. Chairman and
4 Mr. Vice Chairman. I am pleased to comment today on S. 1324,
5 the Intelligence Information Act of 1983. It was my great
6 pleasure to join the able Chairman of this Committee, Senator
7 Goldwater, in introducing that bill on May 18, 1983.

8 Mr. Chairman, I believe that we are all in accord on
9 several basic premises. First, the workings of a democratic
10 government must be as open to its citizens as is consistent
11 with protecting the national security. The electorate must
12 have sufficient information to make rational choices
13 concerning the policies and representatives which best serve
14 their interests.

15 We contrast our cherished tradition of open government
16 with the chilling secrecy of countries behind the Iron
17 Curtain. Those citizens are captive not only by the threat
18 of jail and torture but by the lack of information and the
19 manipulated information which they receive.

20 The second principle upon which we agree is that
21 effective security measures are essential to the preservation
22 of our form of government. We need only look abroad and
23 south of our borders to see certain elements determined to
24 undermine the liberties of freedom-loving peoples throughout
25 the globe. This imposes upon our democratic government the

1 unfortunate but absolutely imperative burden of preserving
2 our security against those forces.

3 Finally, we can agree that our brave intelligence
4 officers and agents on whose shoulders the day-to-day
5 responsibility of protecting our freedom falls deserve the
6 maximum protection that our democratic society can afford
7 them. These individuals place their lives in jeopardy to
8 protect our safety and the safety of our families. They must
9 not be repaid with government policies, no matter how well
10 intentioned, that unnecessarily risk their lives.

11 I am proud to have worked with the Members of this
12 Committee to pass the Intelligence Identities Protection Act
13 last year. This was a long overdue effort to address one
14 threat to the safety of these courageous men and women.

15 Mr. Chairman, as Chairman of the Committee on the
16 Judiciary one of my highest priorities has been revision of
17 the Freedom of Information Act to address the three goals
18 that I have outlined -- open government, national security,
19 and agent protection.

20 I am pleased to report that the Committee on the
21 Judiciary at its Executive Session on June 16, 1983, only
22 last week, ordered reported S. 774, the Freedom of
23 Information Reform Act of 1983. This is a bipartisan
24 compromise which addresses some of the problems which have
25 arisen under the original Act, while recognizing our shared

1 goal of open government. I am hopeful that we will soon be
2 able to send that bill to the House so that legislation can
3 be on the President's desk by the end of this Congress.

4 S. 1324 is a complementary piece of legislation which
5 deals with the unique problems that the Central Intelligence
6 Agency faces in this area. Specifically, it amends the
7 National Security Act of 1947 to exempt from disclosure and
8 attendant search and review under the Freedom of Information
9 Act certain operational files designated by the Director of
10 Central Intelligence to be concerned with specified matters,
11 including foreign intelligence, counterintelligence or
12 counterterrorism operations.

13 In order to protect the public's access to certain
14 information, the bill specifically states that non-designated
15 files which contain information from designated files remain
16 subject to search and review and that designation will not
17 prevent the search and review of a file for information
18 concerning special activities which are not exempt from
19 disclosure under the Freedom of Information Act.

20 Finally, the bill states categorically that these new
21 provisions will not affect proper requests by United States
22 citizens and lawfully-admitted resident aliens for
23 information concerning themselves under the Privacy Act or
24 the Freedom of Information Act.

25 Mr. Chairman, I realize that this is a modest effort to

1 address the FOIA problems which the Central Intelligence
2 Agency has encountered. However, I believe that it is an
3 absolutely essential proposal which has a realistic chance of
4 enactment in this Congress.

5 Not only will it continue protection for information
6 which is clearly exempt from disclosure under the Freedom of
7 Information Act and court decisions under that Act, but it
8 will substantially reduce the administrative burden on the
9 Central Intelligence Agency.

10 This accrues to the benefit not only of the hardworking
11 taxpayers of this country but to those who have filed or plan
12 to file Freedom of Information Act requests. The reduced
13 administrative burden will permit the CIA to respond to
14 requests more quickly, thus providing more useful and timely
15 information.

16 Mr. Chairman, I want to commend you for your outstanding
17 leadership in this area and for scheduling such prompt
18 hearings on this important bill. I look forward to working
19 with you on this and other legislation aimed at protecting
20 our brave agents, our national security, and the openness of
21 our government which we so dearly cherish.

22 The Chairman: Thank you very much, Senator Thurmond. We
23 appreciate those remarks more than I can tell you and thank
24 you for coming over.

25 Senator Thurmond: Thank you, Mr. Chairman.

1 The Chairman: Our next witness will be Mr. John McMahon,
2 Deputy Director of Central Intelligence, who I believe has
3 served that agency over 30 years.

4 Mr. McMahon: Yes, sir.

5 The Chairman: We are very happy to have you with us,
6 John, so you may proceed as you desire.

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1 STATEMENT OF JOHN MC MAHON, DEPUTY DIRECTOR OF CENTRAL
2 INTELLIGENCE

3 ACCOMPANIED BY:

4 JOHN STEIN, DEPUTY DIRECTOR OF OPERATIONS, CENTRAL
5 INTELLIGENCE AGENCY

6 R. EVAN HINEMAN, DEPUTY DIRECTOR FOR SCIENCE AND
7 TECHNOLOGY, CIA

8 ERNEST MAYERFELD, DEPUTY GENERAL COUNSEL, CIA

9 LARRY STRAWDERMAN, CHIEF, INFORMATION AND PRIVACY
10 DIVISION, CIA

11 WILLIAM KOTAPISH, DIRECTOR OF SECURITY

12 Mr. McMahon: I am also very grateful for Chairman
13 Thurmond taking the time to give us his strong support for
14 this bill, and I also welcome the opportunity to address the
15 Members of the Select Committee on Intelligence and discuss
16 S. 1324.

17 The Central Intelligence Agency urges enactment of this
18 bill. It is carefully crafted to have positive benefits for
19 all those affected by it. It is unique legislation in this
20 area of conflicting public interest because it does not
21 require the agonizing tradeoffs between protection of the
22 Agency's intelligence mission and the public's access to
23 government information.

24 In essence, this legislation would exclude the Agency's
25 sensitive operational files from a search and review process

1 that results in an ever-present risk of exposure of sources
2 and methods and creates a perceived risk on the part of our
3 sources and potential sources which greatly impairs the work
4 of the Agency. At the same time, with this exclusion the
5 public would receive improved service from the Agency under
6 the FOIA without any meaningful loss of information now
7 released under the Act.

8 Under present law, there is in effect a presumption of
9 access to CIA operational files and the Agency must defend a
10 denial of our most sensitive information to anyone who asks
11 for it line-by-line, sometimes word-by-word.

12 We, of course, attempt to assure our sources who live in
13 fear of this process that the exemptions available under the
14 FOIA are sufficient to protect their identities, but that
15 assurance is too often seen as hollow. They ask, with
16 justification, in my mind, that in exchange for the risks
17 which they undertake on our behalf we provide them with an
18 absolute assurance of confidentiality.

19 So long as we are compelled by law to treat our
20 operational files as potentially public documents, we are
21 unable to provide the iron-clad guarantee which is the
22 backbone of an effective intelligence service.

23 In addition, the review of operational files withdraws
24 uniquely capable personnel from intelligence operations and
25 compels us to violate our working principles of good

1 security. Let me explain these points in more detail.

2 For security reasons, Agency information is compartmented
3 into numerous self-contained file systems which are limited
4 in order to serve the needs of a particular component or to
5 accomplish a particular function. Agency personnel are given
6 access to specific filing systems only on a need-to-know
7 basis.

8 Operational files are more stringently compartmented
9 because they directly reveal intelligence sources and
10 methods. Yet a typical request under the FOIA will seek
11 information on a generally-described subject, wherever it may
12 be found in the Agency, and will trigger a search which
13 transgresses all principles of compartmentation.

14 A relatively simple FOI request may require as many as 20
15 Agency record systems to be searched. A difficult request
16 can involve over 100. In many instances, the results of
17 these searches are prodigious. Thousands of pages of records
18 are amassed for review. Here is a graphic illustration of
19 the product of an FOIA search, although in the case of
20 records gleaned from operational files virtually none of this
21 information is released to the requester.

22 Security risks remain which are inherent in the review
23 process.

24 The Chairman: May I interrupt? Is that one request?

25 Mr. McMahon: Yes, sir, that is one request, and we had

1 to screen those two mountains of files in order to product^e
2 six ^{inches} ~~edited version~~ of releasable material.

3 The Chairman: Would you guess how many pages you had to
4 go through to get to that information?

5 Mr. McMahon: The documents are 9-1/2 linear feet.

6 The Chairman: Nine and a half linear feet.

7 Senator Leahy: Is that a typical result? I mean, that
8 would be the median one, the average?

9 Mr. Strawderman: This would probably be in the minority,
10 but when you have one like this you have quite an extensive
11 search process to go through, and every page has to be read
12 and scanned word-by-word and line-by-line. But, no, this is
13 not the garden variety case, but we do have a number of these
14 in the Agency to deal with at any particular time.

15 Senator Leahy: Thank you.

16 Senator Chafee: Could I ask a question here, Mr.
17 Chairman?

18 A request comes in, Mr. McMahon. Is it a generalized
19 request such as please send me all the information you have
20 on your Operation Chile?

21 Mr. McMahon: Yes, sir. Often it is like that. What we
22 have done in recent years is attempt to negotiate with the
23 requester to narrow down the request into a topic that is
24 specific enough for us to target where the information is
25 located.

1 In earlier days we had to take a request like that and
2 fan it out all through the Agency and seek information from
3 files that may not have it in there. That took a
4 considerable amount of time. But by negotiating with
5 requesters we are able to narrow the requests down so that we
6 know what files to look at. Even though it may be as many as
7 21 different systems, at least that is a lot better than 100
8 or more.

9 Senator Chafee: Now the typical person that is asking,
10 would they be an author or columnist or would it be an
11 individual just wanting to --

12 Mr. McMahon: It has varied over the years, Senator
13 Chafee. Right after the enactment of the new provisions or
14 the amendments to the FOIA back in 1974, we had a tremendous
15 rush from citizens all throughout the United States. That
16 has now narrowed down to what I would call the professional
17 requester.

18 ^{are} ~~That is~~ people from think tanks and institutes, from
19 professors and possibly even other intelligence services
20 seeking to acquire information on what CIA may have regarding
21 them. So the composition is still a good cross-section, but
22 we seem to have drifted away from the average U.S. citizen
23 coming in with a request.

24 Senator Chafee: And they have to pay a certain amount
25 per page?

1 Mr. McMahon: We negotiate not so much with the private
2 citizen as opposed to an institute or a journalist who wants
3 CIA to do their reference work for them. So we negotiate
4 that out.

5 I must say in some \$21 million or more that we have spent
6 since FOIA was enacted, we have only extracted about \$76,000
7 in fees.

8 Senator Chafee: Thank you. Thank you, Mr. Chairman.

9 Mr. McMahon: The documents which we review, as I
10 mentioned, Mr. Chairman, are scrutinized line-by-line,
11 word-by-word by highly skilled operational personnel who have
12 the necessary training and experience to identify
13 source-revealing or other sensitive information.

14 These reviewing officers must proceed upon the assumption
15 that all information released will fall into the hands of
16 hostile powers and that each bit of information will be
17 retained and pieced together by our adversaries in a
18 painstaking effort to expose secrets which the Agency is
19 dedicated to protect.

20 At the same time, however, the reviewing officer must be
21 prepared to defend each determination that an item of
22 information is classified or otherwise protected under the
23 FOIA. Furthermore, the officer must bear in mind that under
24 the FOIA each reasonably segregable piece of unprotected
25 information must be released.

1 Sentences are carved into their intelligible elements and
2 each element is separately studied. When this process is
3 completed for operational records, the result is usually a
4 composite of black markings interspersed with a few
5 disconnected phrases which have been approved for release,
6 and the exhibit here typifies what happens to a good number
7 of our released information, and I believe the staff has
8 prepared for you examples of this.

9 The public derives little or nothing by way of meaningful
10 information from the fragmentary items or occasional isolated
11 paragraph which is ultimately released from operational
12 files. Yet we never cease to worry about these fragments.
13 We cannot be completely certain of the composite information
14 in our adversary's possession and what further element they
15 need to complete a picture for them.

16 Perhaps we missed a source-revealing significance of some
17 item. Perhaps we misplaced one of the black markings. The
18 reviewing officer is confronted with the dizzying task of
19 defending each deletion without releasing any clue to the
20 identity of our sources. He has no margin for error.

21 Those who have trusted us may lose their reputation,
22 their livelihood, and, indeed, their lives. The wellbeing of
23 their families is at stake if one apparently innocuous item
24 falls into hostile hands and it turns out to be a crucial
25 lead.

1 As long as the process of FOIA search and review of CIA
2 operational files continues, this possibility of error cannot
3 be eradicated. The harm done to the Agency's mission by such
4 error is, of course, unknown and incalculable. The potential
5 harm is, in our judgment, extreme.

6 Aside from this factor of human error, we recognize that
7 under the current Freedom of Information Act, subject to
8 judicial review, national security exemptions do exist to
9 protect the most vital intelligence information. The key
10 point, however, is that those sources upon whom we depend for
11 that information have an entirely different perception.

12 I will explain how that perception has become for us a
13 reality which hurts the work of the Agency on a daily basis.
14 The gathering of information from human sources remains a
15 central part of CIA's mission. In performance of this
16 mission, Agency officers must in essence establish a secret
17 contractual relationship with people in key positions with
18 access to information that might otherwise be inaccessible to
19 the United States Government.

20 This is not an easy task, nor is it quickly
21 accomplished. The principal ingredient in these
22 relationships is trust. To build such a relationship, which
23 in many cases entails an individual putting his life and the
24 safety of his family in jeopardy, to furnish information to
25 the United States Government is a delicate and time-consuming

1 task. Often it takes years to convince an individual that we
2 can protect him.

3 Even then, the slightest problem, particularly a breach
4 or perceived breach of trust, can permanently disrupt the
5 relationship. Public exposure of one compromised agent will
6 obviously discourage others. One must recognize also that
7 most of those who provide us with our most valuable and,
8 therefore, most sensitive information come from societies
9 where secrecy in both government and everyday life prevails.

10 In these societies individuals suspected of anything less
11 than total allegiance to the ruling party or regime can lose
12 their lives, and in societies such as these the concepts
13 behind the Freedom of Information Act are totally alien,
14 frightening and indeed contrary to all that they know.

15 It is virtually impossible for most of our agents and
16 sources in such societies to understand the law itself, much
17 less why the CIA operational files in which their identities
18 are revealed should be subject to that Act. It is difficult,
19 therefore, to convince one who is secretly cooperating with
20 us that someday he will not awaken to find in a U.S.
21 newspaper or magazine an article that identifies him as a CIA
22 spy.

23 Also, imagine the shackles being placed on the CIA
24 officer trying to convince the foreign source to cooperate
25 with the United States. The source, who may be leaning

1 toward cooperation, will demand that he be protected. He
2 wants absolute assurance that nothing will be given out which
3 could conceivably lead his own increasingly sophisticated
4 counterintelligence service to appear at his doorstep.

5 Of course, access to operational files under FOIA is not
6 the only cause of this fear. Leaks, unauthorized disclosure
7 by former Agency employees, and espionage activities by
8 foreign powers all contribute, but the perceived harm done by
9 the FOIA is particularly hard for our case officers to
10 explain because it is seen as a deliberate act of the United
11 States Government.

12 Although we try to give assurances to these people, we
13 have on record numerous cases where our assurances have not
14 sufficed. Foreign agents, some very important, have either
15 refused to accept or have terminated a relationship on the
16 grounds that in their minds -- and it is unimportant whether
17 they are right or not -- but in their minds the CIA is no
18 longer able to absolutely guarantee that they can be
19 protected.

20 How many cases of refusal to cooperate where no reason is
21 given but if known would be for similar reasons I cannot
22 say. I submit, however, that based upon the numerous cases
23 of which we are aware that there are many more cases of
24 sources who have discontinued a relationship or reduced their
25 information flow based on the fear of disclosure. No one can

1 quantify how much information vital to the national security
2 of the United States has been or will be lost as a result.

3 The FOIA has also had a negative impact on our
4 relationships with foreign intelligence services. Our
5 stations overseas continue to report increasing consternation
6 of what is seen as an inability to keep information entrusted
7 to us secret. Again, the unanswerable question is how many
8 other services are now more careful as to what information
9 they pass to the United States.

10 This legislation will go a long way toward relieving the
11 problems I have outlined. The exclusion from the FOIA
12 process of operational files will send a clear signal to our
13 sources and to those we hope to recruit that the information
14 which puts them at risk will no longer be subject to the
15 process. They will know that their identities are not likely
16 to be exposed as a result of a clerical error, and they will
17 know that the same information will be handled in a secure
18 and compartmented manner and will not be looked at by people
19 who have no need to know that information.

20 A distinguished Judge of the U.S. Court of Appeals, Judge
21 Robert Bork in a recent dissenting opinion had this to say
22 about the need to protect those sources that provide valuable
23 information to the nation. He said, and I quote: "The CIA
24 and those who cooperate with it need and are entitled to firm
25 rules that can be known in advance rather than vague

1 standards whose application to particular circumstances will
2 always be subject to judicial second-guessing."

3 Our national interest which is expressed in the authority
4 to keep intelligence sources and methods confidential
5 requires no less. At the same time, as I have explained
6 before, by removing these sensitive operational files from
7 the FOIA process the public is deprived of no meaningful
8 information whatsoever.

9 The paltry results from FOIA review of operational files
10 are inevitable. These records discuss and describe the nuts
11 and bolts of sensitive intelligence operations.
12 Consequently, they are properly classified and are not
13 releasable under the FOIA as it now stands.

14 The reviewing officers who produce these masterpieces of
15 black markings are doing their job and doing it properly. It
16 is crucial to note in this regard that their determinations
17 have been consistently upheld when tested in litigation. The
18 simple fact is that information in operational records is by
19 and large exempt from release under the FOIA, and the few
20 bits and pieces which are releasable have no informational
21 value.

22 When I speak of reviewing officers absorbed in this
23 process, it is important to stress that these individuals are
24 not and cannot be simply clerical staff or even FOIA
25 professionals. In order to do their job, they must be

1 capable of making difficult and vitally important operational
2 judgments. Consequently, most of them must come from the
3 heart of the Agency's intelligence cadre.

4 Moreover, before any item of information is released
5 under the FOIA, the release must be checked with the desk
6 officer with current responsibility for the geographical area
7 of concern. Hence, we must not only remove intelligence
8 officers on a fulltime basis from their primary duties, we
9 must also continually tap the current personnel resources of
10 our operating components.

11 That is so because we have a practice in the operational
12 directorate which requires that every piece of paper which is
13 released, even including those covered with black marks like
14 the ones I have shown you here before, must be reviewed by an
15 officer from the particular desk that wrote the documents or
16 received them from the field, and we cannot alter this
17 practice because the risk of compromise is so great.

18 You can imagine the disruption, for example, on the
19 Soviet desk when the people there must take time off from
20 their work that they are supposed to do in order to review a
21 document prepared for release under the FOIA. It is obvious,
22 of course, that when a CIA operation makes the front pages of
23 the newspapers the FOIA requests on that subject escalate.

24 This loss of manpower cannot be cured by an augmentation
25 of funding. We cannot hire individuals to replace those

1 lost; we must train them. After the requisite years of
2 training, they are a scarce resource needed in the
3 performance of the Agency's operational mission.

4 Let me make clear that this legislation exempts from FOIA
5 only specified operational files. It leaves the public with
6 access to all other Agency documents and all intelligence
7 disseminations, including raw intelligence reports direct
8 from the field. Files which are not designated operational
9 files will remain accessible under the FOIA, even if
10 documents taken from an operational file are placed in them.

11 This will ensure that all disseminated intelligence and
12 all matters of policy formulated at Agency executive levels,
13 even operational policy, will remain accessible under FOIA.
14 Requests concerning those covert actions the existence of
15 which is no longer classified would be searched as before
16 without exclusion of operational files.

17 And, of particular importance, a request by a U.S. citizen
18 or permanent resident alien for personal information about
19 the requester would trigger all appropriate searches
20 throughout the Agency without exception.

21 I would also like to address the benefit to the public
22 from this legislation. Because of the backlog, FOIA
23 requesters now wait two to three years to receive a final
24 response to their request for information when they involve
25 the search and review of operational files within the

1 Directorate of Operations. We estimate that should S. 1324
2 be enacted, the CIA could in a reasonable time substantially
3 reduce the FOIA queue. Indeed, if this bill is enacted,
4 every effort will be made to pare down the queue as quickly
5 as possible.

6 This would surely be of great benefit if the public could
7 receive final responses from the CIA in a far more timely and
8 effective manner. The public would continue to have access
9 to the disseminated intelligence product and all other
10 information in files which would not be designated under the
11 terms of the bill.

12 There is one final issue, Mr. Chairman, which I would
13 like to address before concluding my testimony. This is the
14 issue of how it would be possible for the American public to
15 have access to information concerning any Agency intelligence
16 activity that was improper or illegal.

17 My firm belief is that given the specific guidance which
18 we now have in the Executive Orders and Presidential
19 Directives, along with the effective oversight provided by
20 this Committee and its counterpart in the House, there will
21 not ever again be a repeat of the improprieties of the past.
22 And let me assure you that Bill Casey and I consider it our
23 paramount responsibility that the rules and the regulations
24 not be violated.

25 However, should there be an investigation by the

1 Inspector General's office, the Office of General Counsel or
2 my own office of any alleged impropriety or illegality and it
3 is found that these allegations are not frivolous, records of
4 such an investigation will be found in non-designated files.

5 In such a case, information relevant to the subject
6 matter of the investigation would be subject to search and
7 review in response to an FOIA request because this
8 information would be contained in files belonging to the
9 Inspector General's office, for example, and these files
10 cannot be designated under the terms of this bill.

11 The same would be true for similar reasons, Mr. Chairman,
12 if under the Congressional Oversight Act a senior
13 intelligence community official reports an illegal
14 intelligence activity to this Committee or to the House
15 Intelligence Committee.

16 Mr. Chairman, the CIA urges adoption of this
17 legislation. I understand that the Administration also
18 supports your bill.

19 This concludes my testimony, Mr. Chairman. You have
20 introduced those colleagues of mine who have joined with me
21 here to testify on this bill. But before I close, I would
22 like to note the words of Judge Gerhard Gesell of the U.S.
23 District Court for the District of Columbia in addressing an
24 FOIA case.

25 He said, and I quote, "It is amazing that a rational

1 society tolerates the expense, the waste of resources, and
2 the potential injury to its own security which this process
3 necessarily entails." I share his views. This country needs
4 S. 1324.

5 Thank you, Mr. Chairman.

6 The Chairman: Thank you very much, Mr. McMahon.

7 Now I must apologize for having made my opening statement
8 and not having recognized other members of the Committee who
9 might have wanted to do the same.

10 Senator Chafee.

11 Senator Chafee: I have nothing, Mr. Chairman.

12 The Chairman: Senator Leahy.

13 Senator Leahy: I do, Mr. Chairman, if I might.

14 This is a matter of some interest to me and I was glad to
15 hear Senator Thurmond's support for the compromise
16 legislation that Senator Hatch and I worked out over in the
17 Judiciary Committee. It was a matter of about a year and a
18 half of work.

19 Today we take up an issue that follows on with that and
20 an issue that concerns me as one who has spent a great deal
21 of time as a defender of FOIA, and that is whether to exempt
22 a portion of the Central Intelligence Agency's files from
23 search and review.

24 I think Mr. McMahon's testimony, as always, was to the
25 point, very substantive, and is welcomed by us here. As a

1 member of the Select Committee on Intelligence I understand
2 and I share your concerns about protecting sensitive
3 information on intelligence sources and methods. I have
4 stated this over and over.

5 In the abstract, protection of the CIA's operational
6 files does not even rate an argument. It is a given. The
7 FOIA was never meant to require disclosure of our
8 intelligence sources and methods, and it should not, and it
9 would be absolutely wrong if it did.

10 But in practice you have to question just what the
11 problem is, the real problem that CIA may have on its hands.
12 As I understand it, there is no question that the Agency is
13 being compelled by the FOIA now to release sources and
14 methods information, and the courts have sustained your
15 denials of such information. The courts support your policy
16 of refusing to acknowledge or confirm the existence of
17 special activities.

18 So on that basis you do not search files for information
19 bearing on those activities. So it seems to me that FOIA is
20 not jeopardizing sensitive intelligence information per se,
21 and the problem and the reality may be something else. So
22 let me make sure I fully understand the argument for this
23 legislation.

24 Despite FOIA's existing exemptions and the protection
25 afforded by the courts, good faith compliance with the search

1 and review requirements of the FOIA is alleged to be imposing
2 an unnecessary and unproductive burden on the Agency. The
3 situation described here seems to be that the Agency is
4 forced to search and review the operational files of the
5 Directorate of Operations, the Directorate of Science and
6 Technology, and the Office of Security, and those are files
7 that patently it cannot release.

8 So I think there are three major costs in meeting the
9 requirements for these materials, as I see it. One, because
10 of the sensitivity of the sources and methods information in
11 operational files case officers have to be diverted from
12 their normal duties to review and sanitize these materials.
13 That is at the expense of their regular intelligence work.

14 Secondly, the need to amass all relevant documents
15 pertaining to the request is breaking down vital
16 compartmentation of operational information and you fear that
17 sooner or later information is going to be released which
18 will lead to the identification of human sources or
19 intelligence methods -- again a major concern.

20 And, third, the search and review of operational files
21 which for the reasons already stated would not produce
22 significant releasable information is causing a major backlog
23 in responding to FOIA requests, including those which would
24 bring about normal release of information. I understand that
25 is about 2,500 cases and delay in responding is around two

1 years.

2 Now before I make up my mind on this bill, I want to be
3 shown that the consequence of its passage will not be the
4 release of less information from the CIA's files than at
5 present. I understand your testimony that that is not the
6 intent of the CIA. Is that correct?

7 Mr. McMahon: That is correct, Senator.

8 Senator Leahy: I would not support a bill whose purpose
9 would result in denying information to the public that would
10 otherwise be made available. My view is that public access
11 under FOIA to intelligence information used by policymakers
12 consistent with national security requirements has been
13 valuable. It has to be continued, for example, the release
14 of National Intelligence Estimates from the '50s and early
15 '60s, such as the NIE on the Cuban missile crisis.

16 But I want to see solid Agency assurances on the record
17 that relief from search and review of designated operational
18 files will lead quickly to elimination of the backlog and a
19 more expeditious response to future FOIA requests.

20 Now signs of the Agency's seriousness about dealing with
21 FOIA in the future will be important in helping me to decide
22 whether to support S. 1324. In the past, that attitude was
23 not encouraging. The bill offers an opportunity for you to
24 show that the CIA accepts the public's right to access to
25 information which does not jeopardize intelligence sources

1 and methods or disclose secrets vital to the nation's
2 security.

3 I very much appreciate the statements made here. There
4 have been statements by the Director of the CIA in a speech
5 that FOIA should not even apply to the CIA. Unfortunately,
6 the facts are, of course, that it does, and you are not
7 suggesting that here, and I am glad to see that.

8 So I want to review carefully with you and your
9 associates precisely how these operational files would be
10 designated, which files would fall in this category, and how
11 information in operational files that does not fit the four
12 categories in the bill would be reachable under FOIA.

13 I think that has got to be done in a classified session,
14 Mr. Chairman, but a lot can be handled on the record. I
15 state that -- and that is the longest opening statement I
16 have given in this Committee on any matter, Mr. Chairman, but
17 I think I probably have spent as much time as any Senator,
18 and perhaps more than most, on FOIA during the last 2-1/2
19 years, and the progress of our other bill in the Judiciary
20 Committee on FOIA will to a greater or lesser degree be
21 affected by the progress of this, and I thought it best for
22 those that are following what I might be doing on it to set
23 my feelings on the record.

24 Thank you.

25 The Chairman: Senator Huddleston.

1 Senator Huddleston: Well, thank you very much, Mr.
2 Chairman.

3 As you know, this Committee for at least the last four
4 years has been trying to resolve the issue of the CIA's role
5 under the Freedom of Information Act. In 1979 Admiral Turner
6 asked us to exempt from the Act the operational files of
7 every agency of the intelligence community. Some of us felt
8 that was a little too broad, and instead the intelligence
9 charter in 1980 included a narrower provision just for the
10 CIA's operational files.

11 When that bill was introduced, I thought the exemption
12 ought to be considered within the framework of charter
13 legislation and I still think so. The safeguards in a new
14 CIA charter would make it less necessary to have the Freedom
15 of Information Act as a check against abuses. However,
16 without a new charter the issue takes on a different light.
17 In 1981 we held hearings on separate legislation to exempt
18 operational files of all intelligence agencies, as well as
19 Director Casey's proposal to exempt the entire CIA.

20 At that time it became clear to me that any legislation
21 on CIA and the Freedom of Information Act must be very
22 carefully balanced. A new bill introduced by Senator
23 Goldwater this year represents an effort to benefit both
24 CIA's operational interests and the public's right to know
25 and to have as much information as possible about their

1 government.

2 It seems to me our job is to determine whether or not
3 this bill does in fact serve both of those interests
4 adequately. There is no question that CIA would gain from
5 not having to search its operational files in response to an
6 FOIA request, but what about the public's need to know. Some
7 of the questions I want to check out are:

8 Is it true that the bill would not reduce the actual
9 amount of information that comes out because the courts
10 already let CIA withhold operational data?

11 Will reporters and scholars still have access to as much
12 information as possible consistent with national security
13 about the CIA intelligence product that goes to the national
14 policymakers?

15 What will happen to the enormous backlog of CIA requests
16 and how does CIA plan to improve its processing of requests
17 for information that can be declassified?

18 And, finally, does the bill affect the right of an
19 American citizen to have the courts review CIA decisions to
20 keep secret the facts about controversial operations or
21 alleged intelligence abuses?

22 The Committee has already submitted detailed questions to
23 the CIA on these matters, and some of them will be discussed
24 during this hearing. I hope that most of the information or
25 all of it can be made public so that everyone who is

1 interested can understand the purpose and the effects of this
2 particular legislation.

3 Thank you, Mr. Chairman.

4 The Chairman: Thank you very much.

5 We will begin the questioning with Senator Chafee, who
6 was very instrumental in this work in the past year. John.

7 Senator Chafee: Thank you very much, Mr. Chairman.

8 Mr. McMahon, we have some statistics here before us. I
9 do not know whether you have the same group that show a very
10 dramatic decline in the FOIA requests. Let me take these
11 statistics starting in 1975.

12 It shows in 1975 you received 6,600 requests; in 1982 you
13 received 1,000. Furthermore, in the bar graphs that you have
14 here, although 1975 was the peak -- well, this shows 1975,
15 and then it jumps to 1978, and then 1979 right to the
16 present. There has been a rather astonishing decline in
17 these requests.

18 Is there any particular reason for that? Was it the
19 novelty of it that started it off? Let us see. This started
20 in 1975, did it not?

21 Mr. Strawderman: I will take that, Senator Chafee. In
22 1975 we had an influx of people asking for what do you have
23 on me, or a my-file request ^{when} ~~which came out of~~ the Act, ^{was} ~~I~~
^{passed} ~~guess~~, in 1974. We can service those fairly easily, ^{since for} ~~as on~~
24 about 84 percent of them there ^{are} ~~were~~ no records available, ~~on~~

1 ~~them.~~

2 Senator Chafee: That disappointed them probably, did it
3 not?

4 Mr. Strawderman: We have gotten down to the more serious
5 requesters in the last couple of years, so it seems to be a
6 gradual tailoff of the my-file requests coming in from the
7 early days.

8 Senator Chafee: But, even so, take the difference
9 between 1978 and 1982. It went down 50 percent from 2,100 to
10 1,000, and --

11 Mr. Strawderman: The green line ^{on the chart} Senator, is the Privacy
12 Act requests. The middle line, I believe, are the Freedom of
13 Information Act requests, so it really came down from 1,600
14 to 1,010, and it is continuing at about that same rate this
15 year.

16 Mr. McMahon: I think you also have to bear in mind,
17 Senator Chafee -- and I hate to admit this -- but I would
18 suspect that a number of well-meaning requesters when they
19 know it is going to take two to three years to get an answer
20 are discouraged.

21 Senator Chafee: Well, I suspect that might well be so.

22 Is the term "operational file" a term of art? Does that
23 mean something by its very terminology? If so, why is it not
24 very convenient for you or the Director just to mark
25 everything an operational file?

1 Mr. Mayerfeld: I think the bill defines that quite
2 clearly because it does say that operational files may be
3 designated only if they concern the items listed on page
4 five, beginning line 20. In other words, they have to
5 concern the means by which foreign intelligence, et cetera,
6 is collected by scientific and technical means. They have to
7 concern foreign intelligence operations, counterintelligence
8 and counterterrorism operations, and on those files in the
9 Office of Security that are concerned with the investigations
10 conducted to determine the suitability of sources, and a very
11 important item, beginning on line four, page six,
12 intelligence and security liaison arrangements or information
13 exchanges with foreign governments or their intelligence or
14 security services.

15 In other words, if you will, this constitutes the
16 definition of operational files.

17 Senator Chafee: I see. Let me ask you -- Mr. Chairman,
18 when my time is up, just let me know.

19 The Chairman: Go ahead.

20 Senator Chafee: On these charts here it shows the
21 appeals from 1975 to 1982. Now is that a litigating appeal,
22 an appeal to a court?

23 Mr. Strawderman: This is an administrative appeal,
24 right.

25 Senator Chafee: That is an administrative appeal.

1 Mr. Strawderman: That is right.

2 Senator Chafee: I must confess I do not know. Who do
3 you appeal to? Is there an appeal procedure set up?

4 Mr. Mayerfeld: ^{Yes, to a committee composed of}
~~The Deputy Directors.~~

5 Senator Chafee: But in addition there is a judicial
6 right of appeal, is there not?

7 Mr. Mayerfeld: That is right, Senator.

8 Senator Chafee: Now how many of those -- is it my
9 understanding that the CIA has won every one of those?

10 Mr. Mayerfeld: It has won' every one of those where we
11 asserted a national security exemption, a classification
12 exemption, or the authority under the Director's authority to
13 prevent disclosure of sources and methods. We have won every
14 one of those. I should say, Senator, with one exception.

15 Senator Chafee: When you say every one, roughly how many
16 are you talking about -- not exactly, just roughly?

17 Mr. Mayerfeld: Well, we are talking in terms of
18 hundreds. We have had, I think, some 300 FOIA lawsuits since
19 the Act ^{has been} ~~was~~ in effect.

20 Senator Chafee: Well, that is a pretty good batting
21 average. You have won 299.

22 Mr. Mayerfeld: Two hundred and fifty-six, to be
23 precise. That is the exact figure.

24 Senator Chafee: That is better than Lou Hall's.

25 Mr. Mayerfeld: Well, in a way, Senator, if I may, this

1 proves the need for this bill because what we usually battle
2 over in the courts is this kind of operational information.

3 Senator Chafee: Now in the course of defending
4 ourselves, do you have to go and reveal the information, or
5 how do you work that? Is that a problem in itself?

6 Mr. Mayerfeld: It is a very serious problem. The law
7 requires that every segregable piece of a document that you
8 withhold has to be individually described. It is very hard
9 to describe an item of secret information without giving away
10 the secret, and once you have described it you have to
11 justify the need to withhold that.

12 If I may take you back to that document here, those block
13 letters in there, this was a document which was subject to
14 litigation, and in the affidavit that we had to file to
15 support our arguments to withhold these, each one of these,
16 beginning from A and it runs through L, was a certain kind of
17 information which we were withholding, whether it was the
18 name of an agent, the name of an employee, the identification
19 of a source, the location of a CIA secret installation and so
20 forth.

21 And each one of those block letters represents one of
22 those. And in the accompanying affidavit we had to say
23 wherever the letter K appears the name of a CIA source
24 appeared, and then we have go to on and say in the affidavit
25 that we are required to file why it is necessary to protect

1 Mr. K as a CIA source.

2 Senator Chafee: I see, that is dangerous. Now let me
3 ask you this, in conclusion, Mr. McMahon. You testified in
4 favor of this Act and you are for it. Does it do you much
5 good? On a scale of ten, if ten were your best wish -- which
6 I suspect might be to be exempt entirely from the Act -- how
7 much does this do for you?

8 Mr. McMahon: If you are running an intelligence service,
9 Senator Chafee, you would like to have total exemption for
10 the Agency.

11 Senator Chafee: I am not faulting you for that one bit.

12 Mr. McMahon: But if you are trying to live within the
13 spirit of FOIA and what it was intended to do for the
14 American people, then I support this bill because it makes
15 available or accessible to the citizens of the United States
16 that information which they might legitimately inquire about,
17 and hence we are obliged under this bill to do a search and
18 make sure that we search information against that request.

19 But the key is that it protects our sources. There will
20 not be instances where our source's name may be inadvertently
21 revealed or an incident described which reveals that source
22 through an oversight, and that is what we are trying to do.

23 Senator Chafee: I know that is the objective of the Act,
24 but in fact do you think that will succeed largely?

25 Mr. McMahon: Yes, sir, it will, and it will do away with

1 the perception that a number of our sources have that they
2 are threatened because of the present FOIA Act.

3 Senator Chafee: Do you agree with that, Mr. Stein?

4 Mr. Stein: I do indeed, Senator Chafee. I would add
5 simply to it another very important feature of the bill.

6 In the espionage business, as mentioned in Mr. McMahon's
7 testimony, the mere act -- the mere act of searching --
8 causes a breakdown in one of the cardinal rules of the
9 intelligence business, namely the compartmentation of its
10 information.

11 When a request comes in, anything relating to that
12 request is lumped together and it is taken out of
13 compartmented sections of the operational files, put
14 together, Xeroxed and so forth, and so there is an automatic
15 breaking down of security within the Directorate of
16 Operations itself -- a very dangerous practice.

17 Senator Chafee: Well, thank you, Mr. Chairman.

18 The Chairman: Thank you, John. Do you have some
19 questions?

20 Senator Huddleston: Yes, Mr. Chairman.

21 One of the key questions, of course, raised about the
22 bill itself is how it will affect information that might be
23 appropriate or may come about relating to intelligence
24 abuses. I think if we look back we can point to the fact
25 that each of the CIA Directorates covered by the new

1 exemption was involved in some kind of abuse disclosed by the
2 Rockefeller Commission and by the Church Committee.

3 The MKULTRA program for testing drugs on unwitting
4 subjects was conducted by a component of the Directorate for
5 Science and Technology, for instance. And the CHAOS program
6 for collecting information about domestic protests and
7 dissent was carried out by the Directorate of Operations.
8 And then two projects of the Office of Security, the
9 Resistance and the Merrimack, involved infiltration of
10 domestic groups protesting against the CIA itself.

11 Now in your opening statement, Mr. McMahon, you said that
12 CIA would search the records of investigations of abuses, but
13 what about the operational files as they relate to the abuses
14 themselves? Would they be subject to search and review?

15 Mr. McMahon: Yes, sir. If there is any abuse, Senator
16 Huddleston, within the Agency, that would automatically be
17 reported upward. I am sure this Committee can attest to
18 Agency employees carrying to its attention things that they
19 are concerned about, whether they are illegal or not. So we
20 know that happens.

21 The Agency is also spring-loaded as an institution right
22 now regarding the propriety and legitimacy of everything it
23 is doing. The whole structure, the whole management
24 structure, within the Agency is designed to make sure that
25 abuses do not occur, and if they do occur that they are

1 addressed. And any process by which that takes place would
2 not be a part of the operational file. It would be part of
3 either my office or the Inspector General's office, or
4 General Counsel's office and would be available for search
5 and review under the FOIA.

6 Senator Huddleston: So you do not see this Act as
7 inhibiting in any way the information that is available or
8 the investigation that may be conducted that might relate to
9 some actual or alleged abuses by CIA?

10 Mr. McMahon: No, sir, no more so than it does right
11 now.

12 Senator Huddleston: What about when an operation has
13 become declassified or has been officially acknowledged by
14 the government? What happens then to an actual operation?

15 Mr. McMahon: Then that would become a non-designated
16 file and would be subject to search and review.

17 Senator Huddleston: Would that be an automatic process?

18 Mr. McMahon: Go ahead.

19 Mr. Mayerfeld: Yes. The bill specifically provides,
20 Senator, that ^{information in operational files on} special activities, ^{that is} covert action operations,
21 ~~which, as the bill says,~~ the fact of which can no longer be
22 classified would be subject to search and review.

23 Senator Huddleston: That is an automatic process?

24 Mr. Mayerfeld: The bill provides for that specifically
25 as to covert action.

1 Senator Huddleston: Now questions have been raised as to
2 whether or not the bill would reduce the amount of
3 information actually produced by the CIA to reporters and
4 scholars and concerned citizens, and as I understand it the
5 bill is not intended to exempt files that contain
6 intelligence product -- that is, either raw or finished
7 intelligence reports used by CIA analysts and by the
8 policymakers.

9 And the bill is not supposed to exempt declassified
10 special activities, even covert activities, that go beyond
11 intelligence collection. Is that correct?

12 Mr. Mayerfeld: That is correct.

13 Senator Huddleston: What about historically valuable
14 information on collection operations themselves? I think one
15 example is a document that we have that is entitled "The
16 Berlin Tunnel Operation", which is a very intriguing document
17 which was a clandestine service history of the tunnel from
18 West to East Berlin built by CIA back in the '50s, and the
19 study was obtained from the CIA under the Freedom of
20 Information Act by David Martin, who was then a Newsweek
21 reporter and he used it in writing his book "A Wilderness of
22 Mirrors".

23 Now would studies like this that deal with important CIA
24 collection operations be subject to search and review under
25 the bill?

1 Mr. Strawderman: Yes, sir. We envision that ^{intelligence studies} would be
2 subject to search and review. We have studies of
3 intelligence that are produced and articles from those have
4 been released over recent years -- 67 of them in total -- and
5 they would be subject to search and review under the bill.
6 So they would be accessible to historians and researchers
7 seeking that sort of information.

8 Senator Huddleston: So the bill providing for search and
9 review of information about declassified covert operations,
10 would it also permit the search and review on those rare
11 cases when the existence of a collection operation can be
12 declassified for historical purposes?

13 Mr. Mayerfeld: Well, as to the Berlin Tunnel example,
14 that particular document released to David Martin was found
15 in non-operational files. There is a constant process going
16 on where our Center for Studies in Intelligence writes pieces
17 of historical value and actually puts out an in-house
18 publication. Much of the contents of that particular
19 publication is unclassified, but even the classified portions
20 of that will be subject to the Act, will be subject to
21 requests for declassification review under FOIA.

22 Senator Huddleston: Mr. Chairman, I have a few more.
23 Where is the Chairman?

24 Senator Chafee: (Presiding) Go ahead.

25 Senator Huddleston: Well, I think another area is the

1 role of the courts. I would like to get that pinned down.
2 The basic principle for the Freedom of Information Act for
3 many is that the courts will have an opportunity to review
4 the bureaucratic decisions that keep information secret.

5 Looking at the role of the courts in this specific
6 legislation, we have already dealt with the definition of
7 "operational files" and I assume that the courts would be
8 able to review the determination that a particular file or
9 set of files is exempt from search and review. Is that your
10 understanding?

11 Mr. Mayerfeld: No, Senator, I do not think it is. I
12 think the way this bill is crafted it leaves that discretion
13 to the DCI because it does specifically state that if such
14 files -- in other words, they will be exempt if such files
15 have been designated by the DCI. My understanding of that
16 bill would be that the designation by the DCI would not be
17 judicially reviewable and that this bill would delegate that
18 authority to the DCI.

19 Quite frankly, any other interpretation I think would
20 turn this legislation on its head, because if every time the
21 designation by the DCI were challenged in court, we would be
22 right where we started.

23 Mr. McMahon: I think your concern, Senator Huddleston,
24 can be handled through the oversight process where this
25 Committee will be knowledgeable of our files and what files

1 have been so designated.

2 Senator Huddleston: So the person seeking information,
3 then, would have to pretty well rely on the oversight
4 committees to assure that the Agency is making a proper
5 designation of the files.

6 Mr. McMahon: I think that goes to the very essence of
7 everything we do.

8 Senator Huddleston: Do you think any kind of court
9 review would be detrimental to what you hope to accomplish by
10 this Act?

11 Mr. Mayerfeld: I would say so, Senator.

12 Mr. McMahon: I think it would defeat it, Senator. In
13 fact, the courts have found in cases in the past that the
14 best authorities on the sources and methods and the
15 classification are those in the business of doing it.

16 Senator Huddleston: You do not see this as a major
17 problem for those who are seeking the information?

18 Mr. McMahon: No, sir. Knowing what I know about our
19 operational files and the content and the information in
20 there, what the citizenry of the United States should have
21 access to is our product and the disseminated intelligence,
22 and that is where the information is of interest to them.

23 Senator Huddleston: I will have some further questions.

24 Senator Chafee: All right. Senator Leahy.

25 Senator Leahy: Thank you. Let me just make sure I

1 understand one part of this -- how we would move into what
2 files to be looked at.

3 We have a covert operation, but then it is acknowledged,
4 becomes an overt operation. Can someone then request the
5 operational files?

6 Mr. McMahon: They could request information that is
7 contained in those operational files and they would then be
8 considered non-designated files and a search and review would
9 take place and we would then apply the standards that
10 presently exist under FOIA.

11 Senator Leahy: So the President having acknowledged a
12 covert operation in Nicaragua makes those files a lot
13 different than they were say two months ago.

14 Mr. McMahon: If the President acknowledged a covert
15 operation in Nicaragua, we would still be obliged to protect
16 any alleged sources or methods we have there.

17 Senator Leahy: I understand. I just wanted to use a
18 concrete example to make it easier.

19 [Laughter.]

20 Senator Leahy: You have got to understand us small town
21 lawyers. We come down here to Washington, Mr. McMahon, and
22 we have to just try to go simple fact by simple fact.

23 Mr. McMahon: Coming from New England I appreciate that.

24 Senator Leahy: To keep up with you big city fellows.

25 Let me ask a couple very specific questions, and I think

1 that this review -- one, I think this type of open session on
2 the subject is very, very good, and I think that you well
3 understand and I am sure you encourage that we lay down a
4 very solid legislative history. Your answers to Senator
5 Huddleston's questions just now are going to be an integral
6 part of the legislative history if this Act is to be passed.

7 To follow up on one of Senator Chafee's lines of
8 questions, again an important area to go into, the Agency has
9 a present position on FOIA, and I understand your own feeling
10 as a professional in the area of intelligence would be the
11 feeling that any of us would have. As a professional
12 intelligence officer, given your druthers there would be no
13 FOIA whatsoever. I do not think anybody has any quarrel with
14 that.

15 But then, going within the context of the way our
16 government is set up, this being part of the government
17 agencies, and in the context of FOIA applying to the rest of
18 the government, with that, what is the Agency's position on
19 the public's right to access to information influencing this
20 nation's foreign and national security policy?

21 Mr. McMahon: That is a tough call, Senator. I think
22 that we are obliged to support the wisdom that Congress and
23 the Constitution determined years ago when it gave the
24 President the responsibility for conduct of foreign affairs.
25 And in order to carry that out it was determined that certain

1 forms of classification or secrecy had to exist.

2 I think that we would support the secrecy which protects
3 the ability of the President to prosecute foreign policy in a
4 manner that is effective and efficient.

5 Senator Leahy: Well, let me go to a follow-up question
6 on that. Is this bill what you want, or is it a camel's nose
7 kind of bill? Is it a prelude to renewed pressure for
8 broader exemption?

9 Mr. McMahon: I think it is a bill that is a compromise
10 of the Agency's recognizing that it cannot have total
11 exemption and must seek something that protects our sources,
12 yet at the same time lives within the spirit and the intent
13 of Freedom of Information. I think we have struck an
14 arrangement which just borders on acceptability in CIA.

15 Senator Leahy: I see. Well, you know, your own answer
16 to that is still important in gathering whatever kind of
17 support there might be. It is like the FOIA work that
18 Senator Hatch and I have done in the rest of the FOIA
19 legislation.

20 Depending upon what particular problem each one of us may
21 have been looking at, or other Senators working on it,
22 everybody has had to give somewhat in some areas to reach a
23 workable compromise. In doing that one, though, a lot of the
24 areas where we have reached agreement has been on the basis
25 that that is where it is going to go, that if we agree on a

1 particular area, for example, that we would do our best to
2 fight off any type of amendments from the right or from the
3 left or however described in that.

4 I would think that in trying to get support for the
5 Goldwater-Thurmond legislation here what is going to be the
6 telling factor in the minds of a lot of Senators, and
7 certainly would be in mine, would be is this it or is this a
8 prelude for a quick follow-up.

9 Now I am not suggesting CIA or anybody else be precluded
10 from coming back to try a piece of legislation if it is not
11 working out, to come back for the normal kinds of adjustments
12 as we are doing in FOIA anyway. But I want to know is this a
13 prelude to coming back next year for a wider exemption?

14 Mr. McMahon: There is no hidden agenda here, Senator
15 Leahy. What you see is what you get, and this is what we are
16 standing by.

17 Senator Leahy: Do you understand my question or the
18 reason for it?

19 Mr. McMahon: Yes, I do.

20 Senator Leahy: Is that the White House position on this
21 bill?

22 Mr. McMahon: I am led to believe that, yes.

23 Senator Leahy: So we should not expect further efforts
24 to exempt more of the intelligence community from FOIA from
25 them?

1 Mr. McMahon: Not from them. I imagine there may be an
2 effort or two, but it would not be sanctioned.

3 Senator Leahy: Well, if it is not sanctioned, it ain't
4 going anywhere, let me tell you.

5 [Laughter.]

6 Senator Leahy: They would have two strikes against them
7 at that point. That would be interesting. At that point the
8 White House and I would be joining hands.

9 I have a number of questions for the record, Mr.
10 Chairman, but there is one I would like to ask.

11 On page eight of your prepared testimony you state that
12 should there be an investigation by the Inspector General's
13 office, the Office of General Counsel, or my own office of
14 any alleged impropriety or illegality and it is found these
15 allegations are not frivolous, records of such investigation
16 would be found in non-designated files.

17 I applaud that conclusion. I want to know who makes the
18 determination that an allegation of abuse or impropriety is
19 either serious or frivolous -- the sort of threshold
20 determination.

21 Mr. McMahon: Well, I think that the process of the
22 investigation which the Inspector General or the General
23 Counsel would undertake would determine that and that is
24 usually done in concert with the Director or myself.

25 Senator Leahy: Does that mean that documents relating to

1 any allegation deemed frivolous would be placed in designated
2 files and therefore would not be searchable?

3 Mr. McMahon: I do not think so.

4 Senator Leahy: Did you want to comment?

5 Mr. Mayerfeld: Well, that was not the intent, I do not
6 think, that ^{is what} Mr. McMahon had in mind there, but there are an
7 awful lot of frivolous allegations that arrive in our
8 mailbox. There is a large volume of crank letters that we do
9 get that I think would have to be treated as frivolous.

10 Senator Leahy: I have a great deal of sympathy for
11 that.

12 A few weeks ago I was walking across the West Front of
13 the Capitol, Mr. Chairman, on the first nice day we had. It
14 had stopped raining. And some guy walks up to me and made
15 some statement about Japan. Unfortunately, I am blind in my
16 left eye, which makes me a sucker for a right punch. He
17 hauled off and belted me.

18 I thought that was an unfriendly sort of thing to do, and
19 fortunately so did a police officer who made me look like a
20 midget and who suggested that the man might want to stay
21 around for a bit.

22 It turned out he had been released the day before from
23 St. Elizabeth's, where, among other things, he had been
24 visiting following his criminal charges of assault with
25 intent to kill a police officer and other things -- not

1 enough to keep him there, but sort of just enough for
2 observation.

3 He has now written to the Democratic Leader of the
4 Senate, from whose State he comes -- by coincidence, of
5 course.

6 [Laughter.]

7 Senator Leahy: We try to keep this thing all in the
8 family -- that he had a very definite reason for hitting me,
9 because after I committed a murder in Chicago I let poor Mr.
10 Loeb and Leopold take the blame for it. Near as I could
11 tell, that murder occurred about 20 years before I was born,
12 so I would categorize that as a frivolous accusation.

13 [Laughter.]

14 Senator Leahy: So I am sure that if I get a few of
15 those, I can imagine the number you get.

16 We do have a person who prowls the halls here who has
17 told each one of us that she is protecting us from rays from
18 some machine you have out at CIA directing the activities of
19 the members of this Intelligence Committee. At least all of
20 us now know how to explain to our constituents just why we
21 vote the way we do.

22 Mr. McMahon: I think we have to put that machine in for
23 a rehab; it's not working very well.

24 [Laughter.]

25 Senator Leahy: My last question is can you assure the

1 Committee that any information relating to alleged abuse or
2 impropriety will be searchable?

3 Mr. McMahon: Definitely.

4 Senator Leahy: Thank you, Mr. Chairman.

5 The Chairman: (Presiding) Thank you very much.

6 The question was asked about the President's position on
7 this legislation. I wrote to President Reagan on April 11
8 this year and reminded him that the Republican Party platform
9 fo 1980 stated, and I quote, "We will support amendments to
10 the Freedom of Information Act to reduce costly and
11 capricious requests to the intelligence agencies."

12 I then asked him whether he and his Administration would
13 support some form of legislative relief to the intelligence
14 community from the Freedom of Information Act in the 98th
15 Congress. The President responded to me a few days later and
16 said that he would support a bill which would allow the CIA
17 to devote more attention to their primary mission of
18 developing accurate and timely intelligence while assuring
19 continued access by the public, subject to the existing
20 exemptions of the Act to information in non-operational
21 files.

22 And then he went on to say that he looked forward to
23 early introduction of the bill and that he would work with me
24 and my colleagues here in the Senate to achieve this
25 important goal. In summary, then, I think it is very fair to

1 say that the President and the Administration will support
2 this piece of legislation which Senator Thurmond and I have
3 introduced.

4 Now to get down to some of the smaller problems that you
5 have, I understand that the Ayatollah Khomeini has submitted
6 four requests to the CIA for information about the Shah of
7 Iran. Now must the CIA answer FOIA requests by the Ayatollah
8 Khomeini under the language of my bill?

9 Mr. McMahon: No, not under the language of your bill, as
10 long as that information is contained in operational files.
11 If it is contained in disseminated intelligence, then we
12 would have to do a search and review.

13 The Chairman: Did you have an answer to that?

14 Mr. Mayerfeld: No, that is correct.

15 The Chairman: I thought that was just a little bit
16 farfetched, to have that fellow asking anything from the
17 United States Government.

18 Mr. McMahon: Mr. Chairman, I think that a rough count of
19 the FOIA requests shows that about seven or eight percent of
20 it comes in from overseas.

21 Senator Leahy: Mr. Chairman, I should note that the bill
22 that Senator Hatch and I have worked on would preclude a
23 foreign national from making such a request.

24 The Chairman: I just want to say under the language of
25 this Act that CIA will not longer be required to process and

1 respond to requests from individuals who are not United
2 States citizens and that also is contained in the Hatch Act
3 that has been reported out.

4 Mr. Stein: Mr. Chairman, may I comment there with regard
5 to the comment of Senator Leahy? In the case of the request
6 by the Ayatollah for information on the Shah, that was done
7 by a New York law firm.

8 Senator Leahy: That does create a problem under either
9 of these Acts.

10 Mr. Stein: Yes, sir.

11 The Chairman: Can Philip Agee submit a request under
12 this bill?

13 Mr. McMahon: Yes, he can, sir. You may recall that we
14 have been working for a number of years on a request for
15 Philip Agee. We estimated that we have done research
16 totaling the equivalent of about \$300,000 worth of manyear
17 effort which went into review of his request.

18 The Chairman: But under this legislation a fellow like
19 Agee or any other requester could not get information from
20 your designated files?

21 Mr. McMahon: No, sir, they may not. That is why we
22 endorse this bill.

23 The Chairman: What will be the effect of the bill on the
24 workload required by pending lawsuits?

25 Mr. McMahon: I am sorry, sir, I did not hear that.

Mr. Mayerfeld submits the following information to ~~amend his response~~ to the Chairman's question concerning the potential effect of S. 1324 on pending lawsuits. (Mr. Mayerfeld's original response is contained in lines 3 to 11 on page 55 of the Transcript of Hearings before the Senate Select Committee on Intelligence on 21 June 1983 on S. 1324.)

There are now 69 currently active lawsuits under the Freedom of Information Act in which CIA is a defendant. From among these, it is believed that 39 litigations would be unaffected if S. 1324 is enacted.

Although, on a basis of a preliminary examination I had believed that 22 currently pending lawsuits would be dismissed entirely because they only involved documents found in files that are likely to be designated as exempt from search and review under S. 1324, a closer look into these litigations now leads me to conclude that I cannot with certainty state how many, or if indeed any, of these 22 would be dismissed. Some of these cases involve issues such as fee waivers or attorneys' fees which would not be affected by this bill. Others involve issues such as the scope of the search. One case concerns the question of whether or not the fact of the existence of a given special activity is classified. Several lawsuits which had been included in the original

number of 22 lawsuits expected to be dismissed, concern documents culled from files likely to be designated but, inasmuch as the designation process has not yet taken place, I cannot with certainty state that all the records involved in these lawsuits would be found only in designated files.

In addition, with respect to the remaining 8 lawsuits that will also be affected by the enactment of S. 1324, there may be a narrowing in scope and simplification of issues, however, the impact of this legislation on each of these individual lawsuits cannot be predicted with certainty at this time.

1 The Chairman: What will be the effect of this bill on
2 the workload required by pending lawsuits?

3 Mr. Mayerfeld: I have some pretty close figures on that,
4 Mr. Chairman. There are currently 77 pending lawsuits before
5 the court. If this legislation is enacted, 46 of those
6 lawsuits would be affected. Twenty-two of them should be
7 dismissed entirely because they only deal with documents
8 culled from files which would be designated. As to the
9 remaining, 24, the majority of the documents that are
10 involved in the lawsuit would be taken out of the
11 controversy. *AN UPDATED AND MORE COMPLETE RESPONSE TO THIS QUESTION IS SUBMITTED FOR THE RECORD.*

12 The Chairman: Thank you. How many full-time positions
13 are assigned to handling FOIA requests in each component and
14 subcomponent of the CIA?

15 Mr. Strawderman: We have 56 positions allocated to FOIA,
16 but that is not a good ^{measure} ~~register~~ really of the workyears that
17 we devote to it. We actually devote 128 workyears to the
18 effort, which is really ^{the hours worked} ~~bite and pieces~~ of more than 200
19 people working on the project throughout the course of a
20 year.

21 I would judge that over 100 of those people are
22 professional ~~people~~ with other disciplines in intelligence
23 that ~~they~~ are pulled away from ^(their regular duties) and work on FOIA. So I guess
24 a better ^{measure} ~~register~~ of the effort that goes into ^{FOIA} it is the
25 workyear effort that we provide each year, and that ^{WAS} ~~is~~ 128

1 for 1982.

2 The Chairman: I have heard that the FBI has several
3 hundred people.

4 Mr. Strawderman: I believe that is correct.

5 The Chairman: Who do nothing but this at a cost of about
6 \$15 million a year.

7 Mr. Strawderman: Our cost runs about \$3⁹ million a year,
8 I believe.

9 The Chairman: Oh, well, you are cheap.

10 [Laughter.]

11 The Chairman: Do you have any idea how many personyears
12 or other personnel are devoted to handling such requests in
13 each component or subcomponent of the CIA?

14 Mr. Strawderman: Well, the personyears we would refer to
15 are the workyears, or 128. A predominant number of those are
16 in the Directorate of Operations, where we judge about 70 or
17 so are involved in FOIA. In other areas, Science and
18 Technology, there are two; in the intelligence area there are
19 four; and the others are in the Directorate of
20 Administration; and the DCI ^{Area} or the independent offices pick-
21 ~~up the Director's area~~ of the Agency.

22 A lot of those are involved in the legal processes of
23 administrative appeals and the litigations in the DCI area.

24 The Chairman: John, I do not know if you have had time
25 to think about this, but what specific steps does the CIA

1 intend to take when this bill is passed to reduce the backlog
2 in processing FOIA requests and to improve CIA
3 responsiveness?

4 Mr. McMahon: I think, Mr. Chairman, that we do realize
5 we have an obligation if we are granted the relief that we
6 seek under this bill to cut down on the backlog as quickly as
7 possible and we will certainly take measures to do that. I
8 think if we can eliminate a number of the operational files,
9 that will go a long way in reducing the work load just in
10 itself.

11 The Chairman: Will designated operational files remain
12 subject to search and review under this legislation -- I mean
13 under Executive Order 12356?

14 Mr. McMahon: Yes.

15 Mr. Mayerfeld: Yes, they do, Mr. Chairman.

16 The Chairman: This is a little bit farfetched, but more
17 and more of this type of activity is taking place, and it is
18 taking place, in my opinion, to the detriment of our
19 intelligence community. Have you released a clandestine
20 services history of "The Berlin Tunnel Operation" to David
21 Martin, the author of "The Wilderness of Mirrors"? Have you
22 done that?

23 Mr. McMahon: Yes, sir, we have.

24 The Chairman: How many other such studies exist now and
25 would they be exempted from search and review under this

1 bill?

2 Mr. Strawderman: I do not have a precise number on those
3 that exist, but we have given out 67 articles over the last
4 two or three years in the Studies of Intelligence area, ~~so~~
5 that information is in non-designated files and will be
6 subject to search and review under this bill.

7 The Chairman: It would be subject?

8 Mr. Strawderman: Yes, sir.

9 The Chairman: Is there any way you can clamp down on
10 that type of literary effort, if you can call it that?

11 [Laughter.]

12 The Chairman: I say that seriously because in my
13 association with the activities of other intelligence
14 services in other countries they do not allow anything like
15 that. They do not even print calling cards, and, my God, in
16 this country you can get away with holy murder.

17 Mr. McMahon: We treat a great deal of the articles that
18 go in the Studies in Intelligence as really training aids,
19 Mr. Chairman, because we sanitize them from a source and
20 method standpoint. If the document is in an unclassified
21 form, even though it is in an in-house document, for those
22 articles that we feel have a message to tell to our
23 employees, we retain the security classification.

24 So we would review those documents, but we would be able
25 to extract any revealing or classified information from them

1 as we would under the existing law.

2 The Chairman: I just have one more question. If
3 designated files contain information concerning possible
4 illegal intelligence activities such as violations of
5 Executive Order 12333, would they be exempt from search and
6 review under this bill?

7 Mr. McMahon: No, they would not. The mere process of
8 that illegal action coming up through the process would place
9 that information into non-designated files which would mean
10 that they would be susceptible to search and review.

11 The Chairman: Well, would the CIA support an amendment
12 which would make it clear that designated files will be
13 subject to search and review if they concern any intelligence
14 activity which the DCI, the Inspector General, or General
15 Counsel of the Agency has reason to believe may be unlawful
16 or contrary to Executive Order or Presidential Directive?

17 Mr. Mayerfeld: Mr. Chairman, in my view such a specific
18 item to be legislated would be unnecessary by the very
19 definition. If the Inspector General or the General Counsel
20 or the Director's office has reason to believe that something
21 may be unlawful, there is documentation on this particular
22 matter located in those files, and they are not in designated
23 files.

24 The Chairman: Do you have any other questions, either
25 one of you gentlemen?

1 Senator Leahy: Just one little note on the Berlin tunnel
2 operation. Sometimes it is not all that bad that some of
3 this matter becomes public. In the CIA's own report and the
4 part that has been made public, they say: As a result, the
5 tunnel was undoubtedly the most highly publicized peacetime
6 espionage enterprise in modern times prior to the U-2
7 incident.

8 Worldwide reaction was outstandingly favorable in terms
9 of enhancement of U.S. prestige. There was universal
10 admiration, including informed Soviets on the technical
11 excellence of this installation. The non-communist world
12 reacted with surprise and unconcealed delight to this
13 indication that the U.S. was capable of a coup against the
14 Soviet Union and thoughtful editorial comment applauded this
15 indication the U.S. was capable of fulfilling its role of
16 free world leadership in the struggle.

17 It is not all that bad that we know some of the things
18 they do. I agree with what -- the Chairman's thrust, of
19 course, was that sometimes the other things come out, but I
20 wish sometimes so much of the work that the Agency does is so
21 important to us and it remains secret. I wish there were
22 times that a lot of the good things could be made part of the
23 record, but unfortunately they cannot.

24 The Chairman: Well, I am very happy to report, as I have
25 to your boss, that returning last weekend from a trip to

1 several European countries for the purpose of looking into
2 intelligence matters our intelligence community is
3 increasingly well thought of. It shows an improvement in
4 morale, in how to do things, and I am very proud of the fact
5 that our intelligence now, in my opinion, ranks right up with
6 the best.

7 I want to thank all of you for your help. Do you have
8 another question?

9 Senator Huddleston: I guess one other question, Mr.
10 Chairman. I do not want to duplicate anything.

11 Mr. McMahon: I was going to go out on a high roll there,
12 Senator.

13 [Laughter.]

14 Senator Leahy: We will adjust the record to show that
15 the last remarks of Senator Goldwater will come after this.

16 Senator Huddleston: I just want to pull together all the
17 loose ends we can, Mr. McMahon, and there are always some, of
18 course.

19 This has to do with intelligence product and the policy
20 documents that are in operational files. Now the theory of
21 the bill is that we can exempt operational files from search
22 and review for intelligence product and for policy documents
23 because that kind of information is kept in other file
24 systems that duplicate what is in the operational files.

25 There might be a problem, however, with the theory that

1 some of those materials are shown to policymakers and then
2 returned for storage to the operational files only. Is it
3 the intent of the bill that the intelligence products stored
4 in operational files will continue to be subject to search
5 and review, if it was in fact used by policymakers and
6 analysts?

7 Mr. McMahon: I think the answer is unequivocally yes.
8 Whenever there is an occasion such as that where a document
9 which came forward and then say was handcarried back to the
10 operational files for safekeeping, a dummy copy is placed in
11 the Executive Registry which services the Director's office
12 and my office. So a search there would reveal the content,
13 an index of where to go to check that.

14 So it would be maintained outside of the operational file
15 and there would be an indicator that that information has
16 progressed out of the operational file.

17 Senator Huddleston: So it would then be accessible?

18 Mr. McMahon: It would then be accessible, yes, sir.

19 Senator Huddleston: Would you give the Committee a
20 report, classified if necessary, on how you do store that
21 kind of intelligence information?

22 Mr. McMahon: We would be happy to.

23 Senator Huddleston: And on policy documents that go to
24 the Director or to the National Security Council, but that
25 still might be stored only in operational files?

1 Mr. McMahon: I cannot think of an example, but I know
2 how the system would work and we would be happy to give the
3 Committee an explanation of that.

4 Senator Huddleston: All right. Thank you very much.

5 The Chairman: I have several vugraphs for the record and
6 Senator Durenberger's statement for the record.

7 [The information referred to follows:]
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FOIA/PA Activity 1982

Requests Logged:

FOIA 1,010

PA 1,016

EO 252

TOTAL 2,278

Responses:

No Record 807

Granted in Part 610

Granted in Full 288

Denied in Full 272

Canceled 456

Other 209

TOTAL 2,642

Backlog: 2,739

Responses

1982

Received

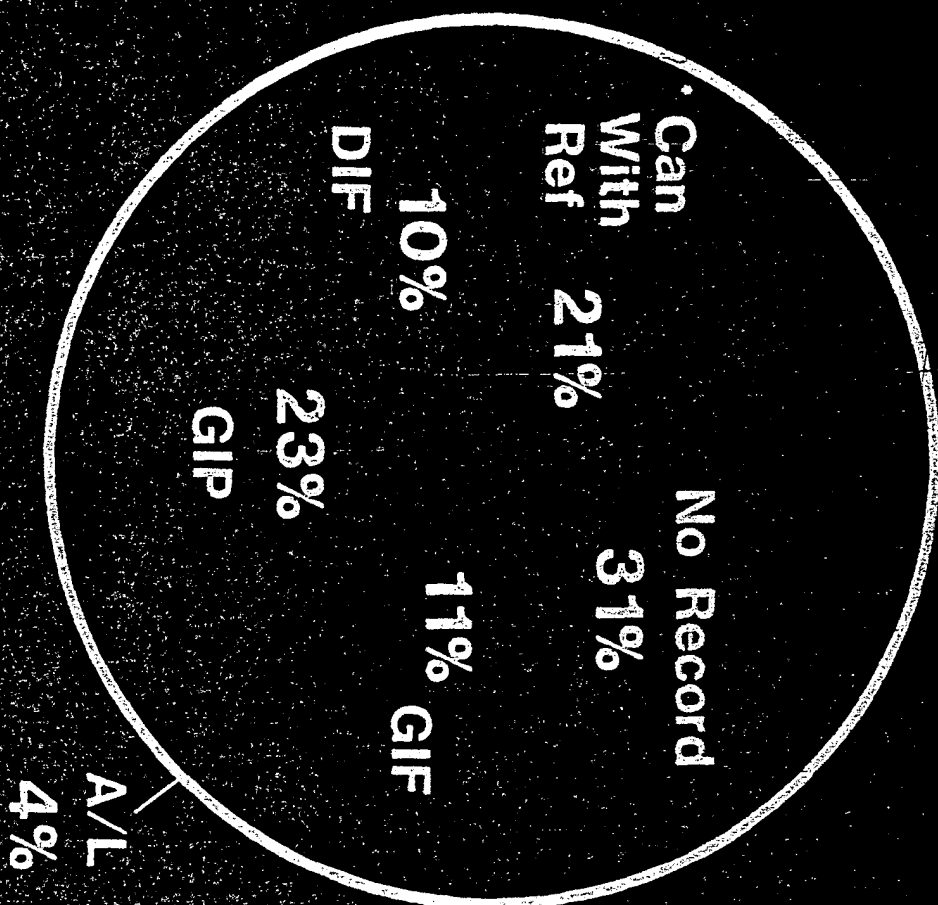
2,278

Answered

2,642

- GIP - Granted in Part
- GIF - Granted in Full
- DIF - Denied in Full
- A/L - Appeals/Litigation

Cancelled, Withdrawn, or Referred



Disposition of FOIA Cases

1975

Received 6,609
Responses 5,479

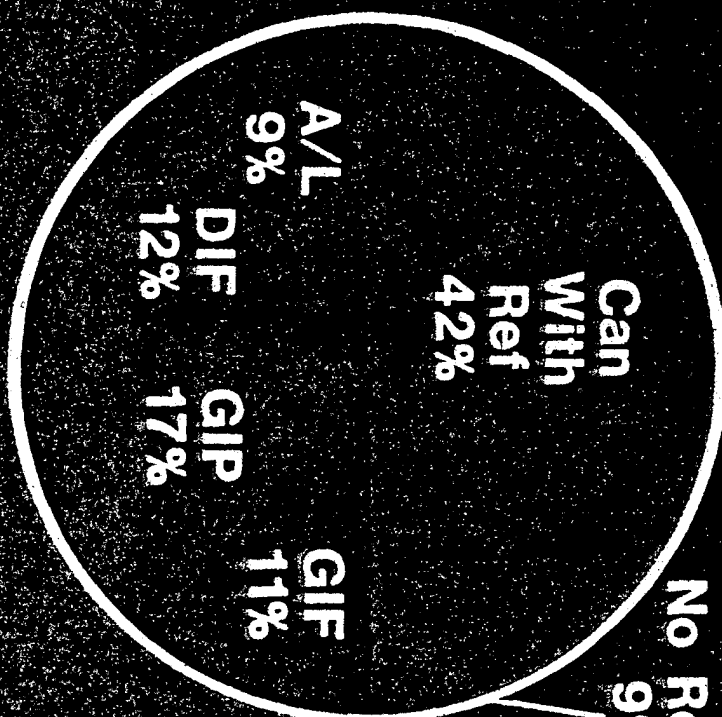


GIF - Granted In Full

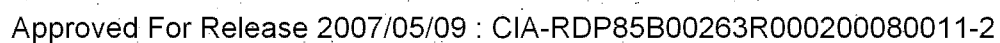
A/L - Appeals/Litigation

1982

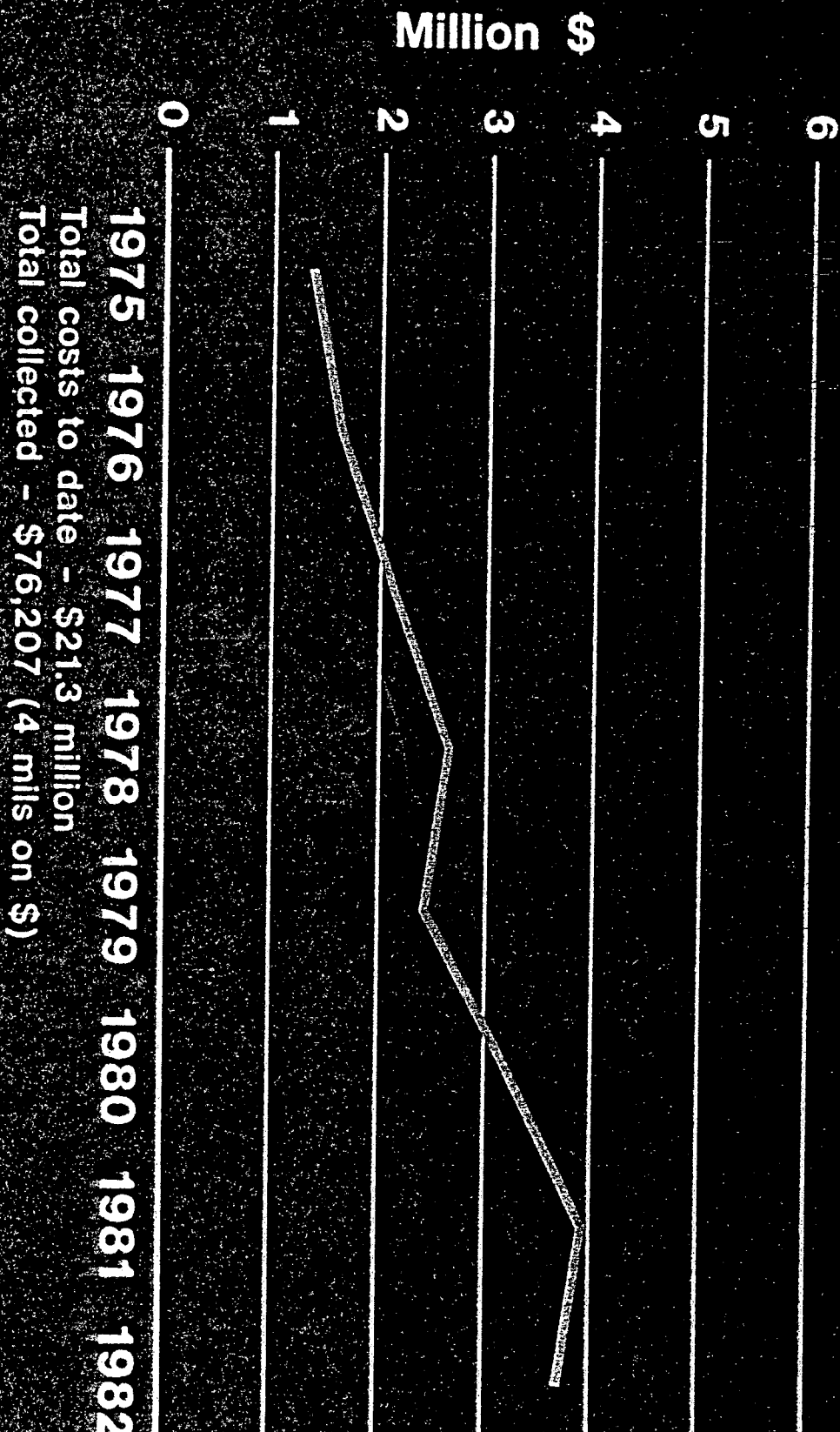
Received 1,010
Responses 1,172



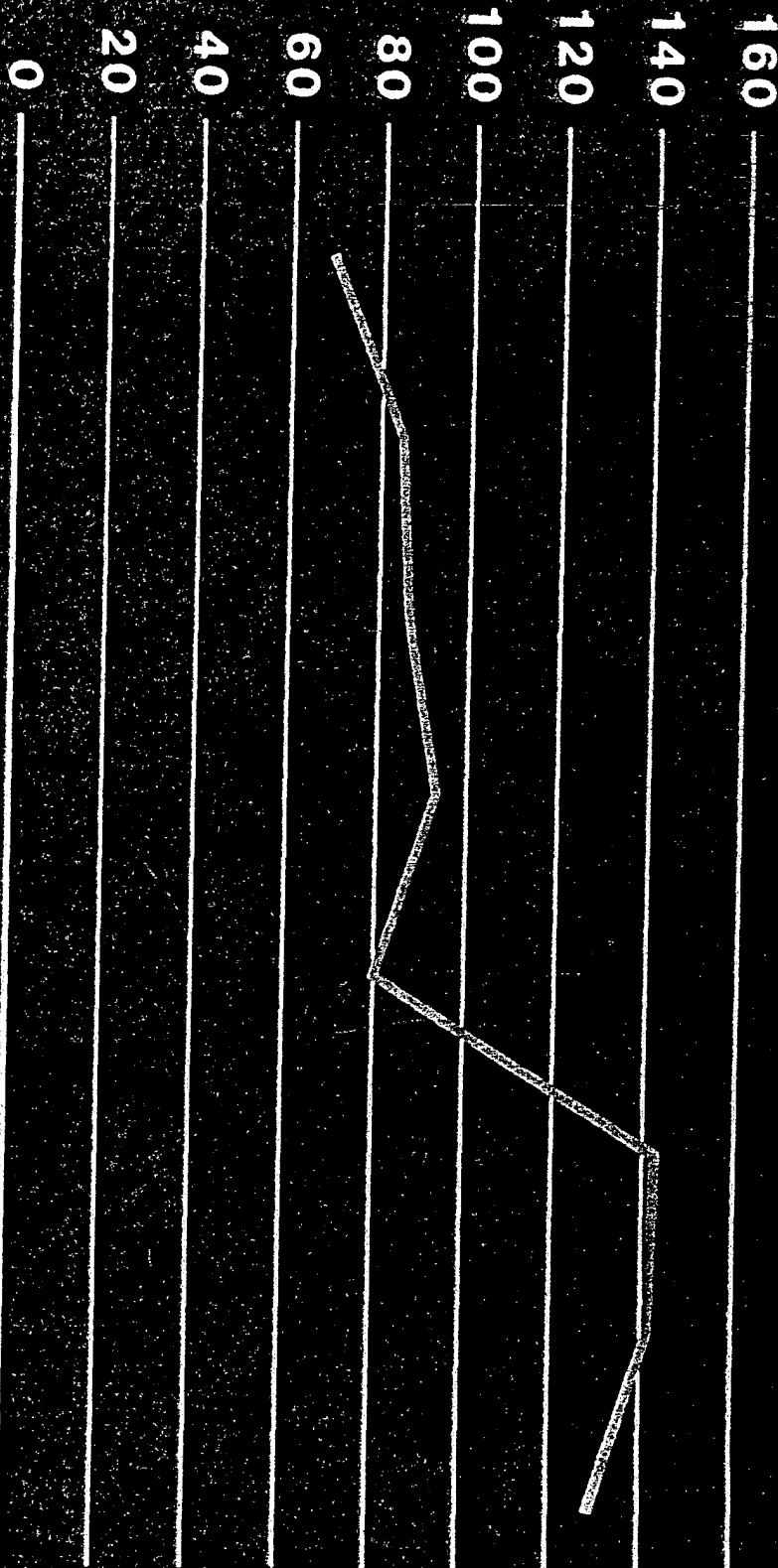
DIF - Denied In Full



Salary Costs for FOIA/PA Program 1975-1982



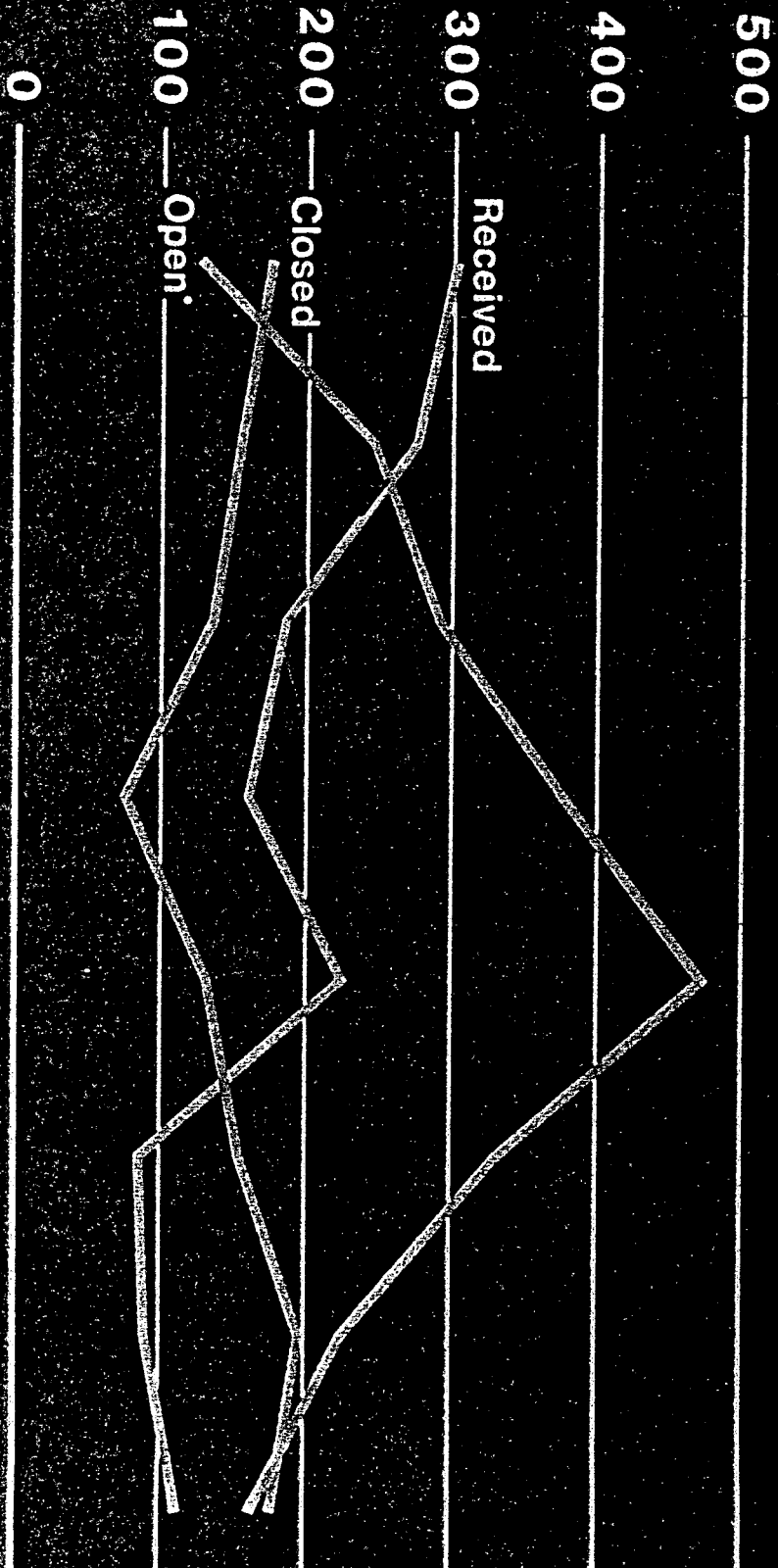
Man-Years Devoted to FOIA/PA Program



1975 1976 1977 1978 1979 1980 1981 1982
Man-years to date - 883.5
Average 108 per year

FOI/PA Appeals, 1975-1982

Received-1,446 Closed-1,282 Open-164



1975 1976 1977 1978 1979 1980 1981 1982

In the early days, appeals were not counted as closed when they went into litigation.

FREQUENT FOIA/PA REQUESTERS

- **Former applicants (why wasn't I hired)**
- **Other personal file requesters**
- **News media representatives**
- **Academic researchers and authors**
- **College students**
- **Prisoners**
- **Persons with specific interests (UFO buffs)**
- **Families attempting to locate missing persons**
- **Curious and deranged**
- **"Professional" requesters (Center for National Security Studies, Institute for Investigative Reporting)**

HOW FOIA AFFECTS THE AGENCY

- Impossible deadlines and consequent litigations
- Inadvertent releases
- Perception by sources of potential compromise
- Arduous review procedures and drain on resources
- Numerous file systems -- coordination/referrals
- Cost of \$21.3 million (receipts 4 mils per \$)



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STATEMENT OF SENATOR DAVE DURENBERGER ON
THE INTELLIGENCE INFORMATION ACT OF 1983

TODAY'S HEARINGS ON THE "INTELLIGENCE INFORMATION ACT OF 1983" ARE PART OF A LONG PROCESS. FOIA RELIEF FOR THE CIA WAS PROPOSED BACK IN 1980, AND THE SELECT COMMITTEE HELD HEARINGS ON THIS ISSUE IN 1981. THE BILL WE ARE CONSIDERING TODAY IS NOTABLY BETTER THAN THOSE WE LOOKED AT TWO YEARS AGO. WE ARE ALL INDEBTED TO OUR CHAIRMAN, SENATOR BARRY GOLDWATER, FOR THE CIA'S PROGRESS FROM RHETORIC TO REALISM.

TWO YEARS AGO, THE INTELLIGENCE COMMUNITY WAS DEMANDING A COMPLETE EXEMPTION FROM THE FREEDOM OF INFORMATION ACT. NOW THEIR PROPOSAL IS MORE MODEST: AN EXEMPTION FOR PORTIONS OF THEIR OPERATIONAL FILES. BEFORE, INTELLIGENCE OFFICIALS CLAIMED THAT FOIA WAS INCOMPATIBLE WITH AN EFFECTIVE INTELLIGENCE SERVICE. NOW THEY STRONGLY ENDORSE A BILL THAT STATES:

"THE FREEDOM OF INFORMATION ACT IS PROVIDING
THE PEOPLE OF THE UNITED STATES WITH AN IMPORTANT

-2-

MEANS OF ACQUIRING INFORMATION CONCERNING THE WORKINGS AND DECISIONMAKING PROCESSES OF THEIR GOVERNMENT, INCLUDING THE CENTRAL INTELLIGENCE AGENCY."

AS THEY SAY IN THE ADS, YOU'VE COME A LONG WAY, BABY!

BUT THE JOURNEY IS NOT YET OVER. THERE ARE MANY ASSURANCES THAT MUST BE GIVEN BEFORE WE CAN ASK THE PUBLIC TO ACCEPT THIS RETREAT FROM FULL FOIA ACCOUNTABILITY. AND THERE ARE CHANGES THAT WILL HAVE TO BE MADE BEFORE WE CAN HONESTLY TELL THE AMERICAN PEOPLE THAT WE HAVE STRUCK THE PROPER BALANCE BETWEEN SECRECY AND OPENNESS.

TWO YEARS AGO, I CALLED THIS ISSUE ONE OF A CONFLICT OF RIGHTS, IN WHICH EACH SIDE HAD AN INTERESTING CASE TO MAKE. I SUGGESTED "THAT FINELY-HONED INSTRUMENTS WILL DO A BETTER JOB THAN MEAT-AXE 'REFORMS'. ...THE EXECUTIVE BRANCH SHOULD NOT LET NARROW PROBLEMS BE JUSTIFICATIONS FOR BROAD EXEMPTIONS." WE ARE ON THE WAY TO CRAFTING SUCH A FINELY-HONED BILL. BUT THE EXECUTIVE BRANCH MAY HAVE TO BEND A LITTLE MORE IF WE ARE TO SUCCEED.

1 The Chairman: The next session will be Tuesday morning
2 next week at 10:00 in room SD-342.

3 We stand adjourned. Thank you, gentlemen.

4 [Whereupon, at 3:30 o'clock p.m., the Committee
5 adjourned, to reconvene upon the call of the Chair.]

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